IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.424 OF 2004
IN
NOTICE OF MOTION NO.219 OF 2004
IN
SUIT NO.182 OF 2004

Ratanlal Hiraji Soni .. Appellant.
V/s.
Khadim Slimuddin Goshmomed & Ors. .. Respondents.

Mr.G.S. Rao i/b. Lex Consultants for the appellant.
Mr.K.K.V. Kurup for respondent Nos.1 and 3.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 23RD AUGUST, 2004.

P.C. :

Heard.

2. The plaintiff is appellant before us. The plaintiff has filed suit for specific performance of the agreement dated June 13, 2000 and also prayed for incidental reliefs. The notice of motion was taken out by the plaintiff for interim reliefs. The notice of motion is pending. However, the prayer for ad-interim relief has been rejected. Aggrieved thereby the present appeal has been preferred.

3. The learned counsel for the appellant-

plaintiff submits that question of deficiency of the stamp duty is under adjudication and relying upon the judgment of this Court in the case of Marine Container Services (I) Pvt. Ltd. V/s. Rajesh Dhirajlal Vora [2001 (4) Mh.L.J. 353] and the judgment of the Supreme Court in the case of Hindustan Steel Ltd. V/s. M/s. Dilip Construction Co. [AIR 1969 Supreme Court 1238], the learned counsel for the appellant contended that while considering the ad-interim relief, the Court ought to have considered the agreement for sale even if it was not stamped properly.

4. Upon specific query, the learned counsel for the appellant submitted before us that the plaintiff was not put in possession pursuant to the subject agreement for sale. He also submitted before us that the appellant-plaintiff has already lodged lis-pendence. It is true that in the given case the court is not precluded from considering the document alleged to be insufficiently stamped while considering the application for ad-interim relief but in the facts and circumstances of the present case where the counsel for plaintiff contends that plaintiff was not put in possession pursuant to the agreement for sale while the agreement on the other

hand records that the possession was handed over to the plaintiff, the document prima facie seems to be covered by Article 25 of the Bombay Stamp Act as has been held by the learned trial Judge and it was apparently inadmissible being not properly stamped. Even if the said document was taken into consideration for the purposes of ad-interim relief, in view of the admitted fact that the plaintiff has lodged lis-pendence, no interference is called for in the impugned order.

5. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)